



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]

DECISION

MDD/143327

PRELIMINARY RECITALS

Pursuant to a petition filed May 22, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Department of Health Services denying disability-based medical assistance, a hearing was held on October 10, 2012, at Sheboygan, Wisconsin.

The issue for determination is whether the Division of Hearings and Appeals has jurisdiction to address the merits of Petitioner's request for Medicaid benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Petitioner's Representative:

Attorney Mark E. Wurtz
Wurtz, Roth & Basler
641 Riverfront Dr.
Sheboygan, WI 53018-4628

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Submission of file by the Disability Determination Bureau (DDB)

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Sheboygan County.
2. On or about February 21, 2012, Petitioner applied for Medicaid, alleging that he is completely disabled. (DDB file; Petitioner's testimony)

3. On April 18, 2012, the DDB denied Petitioner's application. On May 22, 2012, the Petitioner sought reconsideration, but the DDB affirmed its original determination on August 23, 2012 and forwarded the file to the Division of Hearings and Appeals for administrative review. (DDB file)
4. The Petitioner also applied for Social Security Disability benefits through the Social Security Administration (SSA) on May 11, 2012. However, on August 22, 2012, the SSA denied Petitioner's application for Social Security Disability benefits. (DDB file; Petitioner's testimony)

DISCUSSION

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. State v. Hanson, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). In a case involving an application for assistance, the applicant has the initial burden to establish he or she met the application requirements.

A person between ages 18 and 65, with no minor children, must be blind or disabled to be eligible for MA. A finding of disability must be in accordance with Federal Social Security/SSI standards. *See Wis. Stats. §49.47(4)(a)4*. Because the standards are the same, a finding of no disability for Social Security/SSI purposes made within 12 months of the Medicaid application is binding on a State Medicaid agency. Exceptions may occur only if certain conditions exist. Specifically, the Division of Hearings and Appeals has no authority to find a Petitioner disabled unless he or she:

- (i) Allege[s] a disabling condition different from, or in addition to,
that considered by SSA in making its determination; or
- (ii) [The MA application is more than 12 months after the most recent
SSA determination]; or
- (iii) Alleges less than twelve months after the most recent SSA
determination denying disability that his or her condition has
changed or deteriorated since that SSA determination, alleges a
new period of disability which meets the original durational
requirements of the Act, and
 - (A) Has applied to SSA for reconsideration
or reopening of its disability decision and
SSA refused to consider the new
allegations.

42 CFR 435.541(c)(4)(emphasis added).

Here, Petitioner does not dispute the fact that he applied for Social Security Disability benefits; that his application for Social Security Disability benefits was based upon the same disabling conditions listed in his application for Medicaid and that the SSA denied Petitioner's request for benefits within 12 months of his application for Medicaid. However, Petitioner asserts that Hearings and Appeals has jurisdiction to consider the merits of his application for Medicaid because his condition has deteriorated since being denied Social Security Disability Benefits by the SSA on August 22, 2012. Specifically, Petitioner indicates that he has gained weight; that he has scar tissue in his lungs that is affecting his breathing; that he has developed recurring pain in his shoulder and that he has memory problems.

Regrettably, Petitioner's claim must be denied. First, there is no medical documentation in the record to support Petitioner's claim that his medical condition has changed or deteriorated as he describes. Second, Petitioner's complaints of shoulder pain and difficulty breathing were part of his original application for Medicaid that he filed in February 2012. Third, Petitioner claims to have gained approximately 25lbs.

(The functional report completed by Petitioner indicates his weight at the time to be 350 lbs; at the hearing he indicated his is now 378 lbs). However, Petitioner's medical records within the DDB file have previously noted a diagnosis of obesity and that his physicians have counseled Petitioner concerning his diet and the need for him to ambulate/exercise. As such, Petitioner's obesity is not a new condition. Fourth, Petitioner testified that he has been having memory issues since January 2012 that have been getting worse over time, but he did not mention this in his May 22, 2012 application for reconsideration. Finally, even if Petitioner's condition has changed, there is no evidence that the SSA has refused to consider Petitioner's new allegations.

Because the SSA's decision is generally binding and Petitioner has not established that his case falls into any of the exceptions to the rule, the Division of Hearings and Appeals does not have the authority to address the merits of Petitioner's application for disability -based Medicaid benefits.

CONCLUSIONS OF LAW

That the Division of Hearings and Appeals does not have the authority to address the merits of Petitioner's application for disability-based Medicaid benefits where there is a Social Security Administration denial of disability within 12 months of the Medicaid application.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

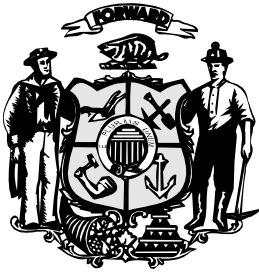
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 15th day of October, 2012.

Mayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals

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The preceding decision was sent to the following parties on October 15, 2012.

Sheboygan County Department of Human Services
Disability Determination Bureau
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